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PROTECTING INDIVIDUAL FREEDOM: EXPEDITIOUS DECISIONS ON BAIL APPLICATIONS

The Supreme Court voiced grave concern over the delays in considering anticipatory bail and regular bail applications. The Supreme Court bench of Justices C.T. Ravikumar and Sanjay Kumar, stated that, notwithstanding repeated judicial statements by the Apex Court, the lack of efficiency in listing and disposing of anticipatory bail applications seriously jeopardizes the personal freedom of petitioners seeking urgent relief.

Considering the frequent delays in various courts, the Bench asked the Registry to transmit a copy of the order to the Registrar General and all concerned at the High Courts to ensure that bail and anticipatory bail petitions is listed as soon as possible.

Earlier in February 2022, a three-judge bench led by the then Chief Justice NV Ramana issued similar concerns upon the High Court's practice of extended adjournments in anticipatory bail cases. Disapproving of the High Court's approach, the bench observed in its ruling that *"Not giving any specific date, particularly in a matter involving anticipatory bail, is not a procedure which can be countenanced. We believe that an indefinite delay in a case involving anticipatory bail, especially after admitting it, is damaging to a person's important right."*

The criminal justice system in India, especially the criminal Courts dispense justice and they are under an obligation to always keep in their mind the Fundamental Rights of accused persons especially when they are under trials and presumed to be innocent at that stage. For the purposes of considering bail matters, the Fundamental Rights especially under Article 21 of the Constitution of India have to be always kept in mind since the personal liberty of an individual is involved.

In this backdrop even the Hon'ble Punjab and Haryana High Court has directed to hold training for judicial officers of District Courts who deal with the personal liberty of accused persons on a daily basis. It is crucial that they should be fully versed not only in the practical but also in the academic aspects of the Fundamental Rights, because a balance must be struck every time a matter for grant of bail is considered.

Wish You All A Very Happy & Prosperous New Year!

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

“Detention being a restriction on the invaluable right to personal liberty of an individual and if the same were to be continued for the maximum period, it would be eminently just and desirable that such restriction on personal liberty, in the least, reflects an approach that meets the test of Article 14 of the Constitution.”

— *Dipankar Datta, J. in Ameena Begum v. State of Telangana, (2023) 9 SCC 587, para 79*

ARBITRATION AND CONCILIATION ACT, 1996

[In Re: Interplay between Arbitration agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899: Neutral Citation 2023 INSC 1066- HELD](#) - A seven judge bench of Hon'ble Supreme Court ruled that arbitration clauses in unstamped or in inadequately stamped agreements are enforceable. In sufficiency of stamping does not make the agreement void or unenforceable but makes it in admissible in evidence. However, it is a curable defect as per the Indian Stamp Act. The Hon'ble Supreme Court overruled the judgment rendered by the five judges bench in [M/s NN Global Mercantile Pvt. Ltd. vs. M/s Indo Unique Flame Ltd and others](#) which held that unstamped arbitration agreement are not enforceable.

CIVIL PROCEDURE CODE, 1908

[Benny Dsouza vs. Melwin Dsouza: SLP \(C\) NO.23899 of 2023:- HELD](#) - It was held by Hon'ble Supreme Court while explaining explanation provided in order 41 Rule 17 CPC that if the appellant does not appear when the appeal is called for hearing then the same can be dismissed for non prosecution and not on the merits.

[M/s Bharat Patroleum Ltd. vs. ATM Construction Pvt. Ltd. : Neutral Citation 2023 INSC 1042: - HELD](#) - While considering an appeal challenging the refusal of the trial court as affirmed by the High Court to reject the suit under Order 7 Rule 11 of the Code of Civil Procedure, it was held by Hon'ble Supreme Court that a suit for possession and suit for claiming damages for use of occupation of the property are two different causes of action.

Hence, second suit filed claiming damages for use and occupation of the premises was maintainable after a suit for possession.

[Eldeco Housing and Industries Ltd. vs. Ashok Vidhyarthi and others: SLP \(C\) No. 19465 of 2021:- HELD](#) - Hon'ble Supreme Court held that no amount of evidence or merits of the controversy could be examined at the stage of deciding rejection of plaint application under Order 7 Rule 11 CPC. Reliance was placed upon [Kamla and others vs. KT Eshwarasa and others \(2008\) 12 SCC 661](#), wherein it was held that only the averments in the plaint would be relevant for invoking clause D of order 7 Rule 11 CPC for the purpose and there cannot be any addition and subtraction.

[Koushik Mutually Added Coperative Housing Society vs. Amina Begum and another: Neutral Citation 2023 INSC 1065:- HELD](#) - It was held by Hon'ble Supreme Court that a civil revision petition under Section 115 CPC is not maintainable against the dismissal of an application filed under Order 9 Rule 13 CPC to set aside an exparte decree. It was observed that when there is an express provision available under the CPC or any statute under which an appeal is maintainable, by passing the same a revision petition cannot be filed. It is needless observed that in the absence of the appellate, revision is maintainable.

[Saumya Chaurasia vs. Directorate of Enforcement: Neutral Citation 2023 INSC 1073: - HELD](#) - While emphasizing a very high standard of professionalism and legal acumen i.e. expected from the advocates particularly designated senior advocates, it was observed by Hon'ble Supreme Court that though it is true that the advocates would settle the pleading and argue in the

courts on instructions given by their clients, however, their duty to diligently verify the facts from the record of the case, using the legal acumen for which they are engaged, cannot be obligated.

Mohammed Abdul Wahid vs. Nilofer and another: Neutral Citation 2023 INSC 1075:- HELD - In this case, while setting aside the judgment of Hon'ble Bombay High Court which held that documents can be directly produced at the stage of cross examination only to confront a witness, who is not a party to the suit, Hon'ble Supreme Court while making no distinction between the party to the suit and a witness in this context held that a document can be produced during cross examination in a civil trial to confront a party to the suit or a witness. The issue in this case revolved around order 7 Rule 14 (4), order 8 Rule 1A (4) and order 13 Rule 1 (3) CPC.

LIMITATION ACT, 1963

M/s North Eastern Chemicals Industries (Pvt. Ltd.) and another vs. M/s Ashok Paper Mill (Assam Ltd. and another): Neutral Citation 2023 INSC 1059:- HELD - It was held by Hon'ble Supreme Court that in the absence of any particular period of time being prescribed to file an appeal, the same would be governed by the principle of reasonable 'time' for which by virtue of its very nature, no straight jacket formula can be laid down and it is to be determined as per the facts and circumstances of each case.

MOTOR VEHICLES ACT, 1988

The New India Assurance Company Ltd. vs. Anand Pal and others: SLP (C) No. 7805 of 2022:- HELD - While setting aside the motor compensation awarded to the elder brothers of the deceased victim under the Motor Vehicles Act, Hon'ble Supreme Court observed that the siblings of the victim were older and were married with their own respective family. In these circumstances, they being dependent on the victim's earnings is unlikely particularly when the victim resided separately.

SERVICE JURISPRUDENCE

Pavneesh Kumar vs. Union of India and others: Neutral Citation 2023 INSC 1025:- HELD - While distinguishing between the normal promotion and promotion to limited department competitive exams, it was observed that limited department competitive examination vis-a-vis competitive examination is a facility or a chance given for out of their promotion without waiting for the normal course of promotion. It in effect is selection through competitive examination within the limited category of candidates and cannot be acquitted with normal promotion. This being the position, the argument that regular promotion criteria had to be applied with regard to medical fitness even in the matter of selection through LDCE is not acceptable. The observations were made by Hon'ble Supreme Court in an appeal against Hon'ble Delhi High Court judgment which dismissed the appellants petition to quash the medical examination result which declared him medically unfit for the post of Sub Inspector.

SPECIFIC RELIEF ACT, 1963

Madahvan (dead) through LRs vs. Kanka Vally: Civil Appeal No.1392 of 2011:- HELD - In a matter deciding an issue relating to the specific performance for execution of the re-conveyance deed, it was noted by Hon'ble Supreme Court that a claim implies that the opposite party against whom the claim is being made is the owner. Therefore, taking the averments made in the plaint as correct, there was not occasion for the appellants (plaintiffs) to seek specific performance compelling the respondent (defendant) to execute re-conveyance deed in as much as, even according to the case of appellants (plaintiffs) as pleaded in the plaint and in evidence that the respondent (defendant) had no right title or interest in the suit property.

Harshali Chowdhary

Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

“Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatised, the courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.”

— *Dr D.Y. Chandrachud, J. in XYZ v. State of M.P., (2023) 9 SCC 705, para 24*

Ram Kishor Arora Vs. Directorate of Enforcement: 2023 SCC OnLine SC 1682 ; 2023 INSC 1082- Requisites regarding handing over the document containing the grounds of the arrest to arrestee under Section 19 of the Prevention of Money Laundering Act, 2002?-HELD- Hearing a Criminal Appeal against the judgment and order dismissing the petition seeking declaration that the arrest of the appellant by the Directorate of Enforcement was illegal and violative of the fundamental rights guaranteed to the appellant under Articles 14, 20 and 21 of the Constitution of India, and seeking direction to release the appellant forthwith, the Hon’ble Supreme Court has opined that the person asserted, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India.

The Hon’ble Supreme Court has further held that non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in *Pankaj Bansal Vs Union of India and Others,*

2023 SCC OnLine SC 1244 could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 of PMLA as also Article 22(1) of the Constitution of India, as held in *Vijay Madanlal Choudhary and Others vs. Union of India and Others (2022) SCC Online SC 929.*

Ram Naresh Vs. State of Uttar Pradesh: 2023 SCC OnLine SC 1597 ; 2023 INSC 1037-Common Intention under section 34 IPC?-HELD-Hearing a Criminal Appeal against the judgment affirming the convicting and sentencing the appellant for life imprisonment for an offence under Section 302 read with 34 of the Indian Penal Code, the Hon’ble Supreme Court has held that for applying Section 34 IPC there should be a common intention of all the coaccused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as

stated earlier even during the occurrence of the incidence.

Mohit Singhal & Anr. Vs. State of Uttarakhand & Ors. :2023 SCC OnLine SC 1598 ; 2023 INSC 1035-Attraction of section 107 of the IPC?-HELD- Hearing a Criminal Appeal against the judgment refusing quashing of the First Information Report registered for an offence punishable under Section 306 of IPC, the Hon'ble Supreme Court has held that to attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide.

The Hon'ble Supreme Court has further held that the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

Pavana Dibbur Vs. The Directorate of Enforcement: 2023 SCC OnLine SC 1586 ; 2023 INSC 1029-Offence under Section 3 of the PMLA?-HELD- Hearing a Criminal Appeal against the judgment refusing quashing of the complaint under the second proviso to Section 45(1) of the Prevention of Money Laundering Act, 2002, the Hon'ble Supreme Court has concluded that:

- a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;
- b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled

offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

- c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;
- d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and e. The offence punishable under Section 120B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: CONSTITUTION

"A judgment is an authority only in regard to its ratio which is required to be discerned; and a decision cannot be regarded as an authority in regard to its conclusion alone or even in relation to what could be deduced therefrom."

— *Dinesh Maheshwari, J. in Suneja Towers (P) Ltd. v. Anita Merchant, (2023) 9 SCC 194, para 50*

[Animal Welfare Board of India v. Union of India: 2023 SCC OnLine SC 661](#) - Is

the Tamil Nadu Amendment Act referable, in pith and substance, to Entry 17, List III of the Seventh Schedule to the Constitution of India, or does it further and perpetuate cruelty to animals; and can it, therefore, be said to be a measure of prevention of cruelty to animals?-

HELD- The Court opined that, the expressions Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States have undergone substantial change in the manner they were used to be practiced or performed and the factual conditions that prevailed at the time the A. Nagaraja judgment was delivered cannot be equated with the present situation. The Court said that the large part of pain inflicting practices, as they prevailed in the manner these three sports were performed in the pre-amendment period have been substantially diluted by the introduction of these statutory instruments. The Bench said that it cannot strike down the law on apprehension of its abuse or disobedience. Further, it stated that all the three bovine sports, after amendment, assume different character in their performance and practice, and for these reasons ejected the Board's argument that the Amendment Acts were merely a piece of colourable legislation with cosmetic change to override judicial pronouncement. After reading the amended Statutes with the respective Rules or Notification, the Court viewed that the Amendment Acts do not encroach upon the Central legislation. The Court held that Tamil Nadu Amendment Act is not a piece of colorable legislation. It relates in pith and substance to entry 17,

List III of the Seventh Schedule to the Constitution of India. It minimises cruelty to animals in the sports concerned and once the Amendment Act, along with the rules and notifications are implemented, the aforesaid sports cannot come within the mischief sought to be remedied by Sections 3, 11(1)(a) and (m) of the PCA Act. Jallikattu is a type of bovine sport, and it is going on in Tamil Nadu for at least last few centuries. This sport is an integral part of Tamil culture requires religious, cultural, and social analysis in greater detail, which cannot be undertaken by the judiciary. The question that the Tamil Nadu Amendment Act is to preserve the cultural heritage of the particular State is a debatable issue, which has to be concluded in the House of People and ought not be a part of the Judicial inquiry.

Is it colourable legislation which does not relate to any Entry in the State List or Entry 17 of the Concurrent List? The Tamil Nadu Amendment Act states that it is to preserve the cultural heritage of the State of Tamil Nadu. Can the impugned Tamil Nadu Amendment Act be stated to be part of the cultural heritage of the people of the State of Tamil Nadu to receive the protection of Article 29 of the Constitution of India?-

HELD- The Court said that since, legislative exercise has already undertaken and Jallikattu has been found to be an important part of cultural heritage of Tamil Nadu, the Court said that it will not disrupt this view of the legislature. The Court rejected the view in A Nagaraja that performance of Jallikattu is not a part of cultural heritage of Tamil Nadu. In the preamble to the Amendment Act Jallikattu has been described to be a part of culture and tradition of Tamil Nadu. The Court

said that the Amendment Act read with the Rules substantially reduces the pain and suffering of the bulls and continues with the traditional sports. The amendment has received the President's assent and held that there is no flaw in the State action. These sports need to be isolated from the way they were practiced earlier.

Is the Tamil Nadu Amendment Act, in pith and substance, to ensure the survival and well-being of the native breed of bulls? Is the Act, in pith and substance, relatable to Article 48 of the Constitution of India?-HELD- The Court further held that the Tamil Nadu Amendment Act is not in pith and substance, to ensure survival and well-being of the native breeds of bulls. It is also not relatable to Article 48 of the Constitution. Incidental impact of the said amendment may fall upon the breed of a particular type of bulls and affect agricultural activities, but the said amendment is referable in pith and substance to Entry 17, List III of the Seventh Schedule to the Constitution.

Does the Tamil Nadu Amendment Act go contrary to Articles 51-A(g) and 51-A(h), and could it be said, therefore, to be unreasonable and violative of Articles 14 and 21 of the Constitution of India?-HELD- The Court opined that Tamil Nadu Amendment Act do not go contrary to Articles 51-A(g) and 51-A(h), and it does not violate Articles 14 and 21 of the Constitution of India.

Is the impugned Tamil Nadu Amendment Act directly contrary to the Nagaraja judgment, and the review judgment of 2016 in the aforesaid case, and whether the defects pointed out in the aforesaid two judgments could be said to have been overcome by the Tamil Nadu Legislature by enacting the impugned Tamil Nadu Amendment Act?-HELD- The Court held that the Tamil Nadu Amendment Act along with the Rules concerned is not directly contrary to the Nagaraja judgment, and the review judgment of 2016 dismissing the plea for review of A Nagaraja

Judgment, as the defects pointed out by the aforesaid Judgments have been overcome by the Tamil Nadu Legislature by enacting the impugned Tamil Nadu Amendment Act.

Shilpa Sailesh v. Varun Sreenivasan: 2023 SCC OnLine SC 544- Supreme Court's power to grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage despite the other spouse opposing the prayer?-HELD- The Court took note of Section 13(1)(i-a) HMA and Section 23(1)(a) HMA and delineated the meaning of the term 'cruelty' by referring to its various judgments and said that the grant of divorce on the ground of irretrievable breakdown of marriage by Supreme Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. The Court should be fully convinced and satisfied that marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. For this, several factors are to be considered such as: The period the parties had cohabited after marriage; When the parties had last cohabited; The nature of allegations made by the parties against each other and their family members; The orders passed in the legal proceedings from time to time, Cumulative impact on the personal relationship; Whether, and how many attempts were made to settle the disputes by intervention of the Court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. Further, the Court clarified that these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational

qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. The Court said that extraordinary care and caution must be exercised, and unless it is shown that exceptional and special circumstances exist to demonstrate that substantial and grave injustice has been rendered, Supreme Court should not review/interfere with the decision appealed against. The Court would not pass an order in contravention or ignorance of a statutory provision, or merely on sympathetic grounds. The Court read down the judgments in *Manish Goel v. Rohini Goel*, (2010) 4 SCC 393, *Neelam Kumar v. Dayarani*, (2010) 13 SCC 298, *Darshan Gupta v. Radhika Gupta*, (2013) 9 SCC 1, *Hitesh Bhatnagar v. Deepa Bhatnagar*, (2011) 5 SCC 234, *Savitri Pandey v. Prem Chandra Pandey*, (2002) 2 SCC 73 and others in the context of the power of Supreme Court given by the Constitution of India to do 'complete justice' in exercise of the jurisdiction under Article 142(1) of the Constitution. Thus, it was held that the power to do 'complete justice' is not fettered by the doctrine of fault and blame, applicable to petitions for divorce under Section 13(1)(i-a) of the Hindu Marriage Act.

Can a party directly canvass before the Supreme Court the ground of irretrievable breakdown by filing a writ petition under Article 32 of the Constitution?-HELD- After placing reliance on *Poonam v. Sumit Tanwar*, (2010) 4 SCC 460, the Court said that the parties should not be permitted to circumvent the procedure by resorting to the writ jurisdiction under Article 32 or 226 of the Constitution of India, as the case may be as the relief under Article 32 can be sought to enforce the rights conferred

by Part III of the Constitution, and on the proof of infringement. Therefore, a party cannot file a writ petition under Article 32 and seek relief of dissolution of marriage directly from Supreme Court. Thus, the Bench held that in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein Supreme Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. Further, it was said that the Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.

[Supriyo v. Union of India, 2023 SCC OnLine SC 1348- Same Sex Marriage-HELD-](#) The 5-judge Constitution Bench of Dr DY Chandrachud, CJI and Sanjay Kishan Kaul, S. Ravindra Bhat, Hima Kohli, PS Narasimha, JJ wrote 4 opinions on the Same Sex Marriage/Marriage Equality matter where they agreed on some points and disagreed on others. In a 366 pages long verdict, all judges said in one voice that there was no fundamental right to marry and that the Supreme Court could not enter judicial legislation to read words into the Special Marriage Act and make it a gender-neutral legislation. The Court left it to Parliament to undertake this process.

Mahima Tuli
Research Fellow

NOTIFICATION

1. Bill increasing jurisdiction of City Civil Court up to ₹10 crore receives President's assent: On 20-11-2023, the Bombay City Civil Court (Amendment) Act, 2023 has received the assent of President in order to amend the Bombay City Civil Court Act, 1948.

Key Points:

1. Section 3 relating to "Constitution of Court" has been revised. It provides for the jurisdiction to receive, try and dispose of all suits and other proceedings of civil nature arising within Greater Bombay. Earlier, the jurisdiction of Court was on matters not exceeding Rs. 1 crore. Now, the limit has been extended to Rs. 10 crores.
2. Exceptions- Suits and proceedings which are cognizable:
 - By the High Court-
 - as a Court of Admiralty or Vice-Admiralty or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial Jurisdiction;
 - for the relief of insolvent debtors;
 - under any special law other than the Letters Patent;
 - under the Pars Marriage and Divorce Act, 1936;
 - in respect of intellectual property matters.
 - By the Small Causes Court.
3. All the suits and proceedings cognizable by the Bombay City Civil Court which are pending in High Court will be transferred to Bombay City Civil Court on the date when the provisions of this Amendment Act will come into effect.¹

¹ https://www.livelaw.in/pdf_upload/bombay-city-civil-amendment-act-2023-505619.pdf

EVENT OF THE MONTH

- One day Refresher-cum-Orientation Course was organized by Chandigarh Judicial Academy for Additional District and Session Judges from the States of Punjab, Haryana and UT on December 23, 2023. The course was coordinated by Sh. Amrinder Singh Shergill, ADJ-cum- Faculty Member, CJA. The Resource Persons for the course were Sh. Amrinder Singh Shergill, ADJ-cum- Faculty Member, CJA, Sh. Pradeep Mehta, Faculty Member, CJA and Dr. Sonia Kinra, ADJ-cum-Faculty Member, CJA.

PICTORIAL GLIMPSES

Refresher-cum-Orientation Course

